

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JORGE PENA,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER
BINAGI, Tax # 953685, and POLICE OFFICERS JOHN
DOES #1-10 (names and number of whom are unknown at
present), and other unidentified members of the New York
City Police Department,

Defendants.

SUMMONS

Index No.:

The Basis of Venue is:
Location of Incident

Plaintiff designates New York
County as the place of trial.

To the above named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

DATED: New York, New York
February 5, 2016

Yours, etc.

/s/

JACOBS & HAZAN, LLP.
STUART E. JACOBS, ESQ.
Attorney for Plaintiff
11 Park Place, 10th Floor
New York, New York 10007
(212) 577-2690

TO: City of New York, New York City Law Department, 100 Church Street, NY, NY 10007
POLICE OFFICER BINAGI, Tax # 953685, Transit District 2, West Broadway and
Lispenard Street, NY, NY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
JORGE PENA,

Plaintiff,

INDEX NO.:

VERIFIED COMPLAINT

-against-

THE CITY OF NEW YORK, POLICE OFFICER
BINAGI, Tax # 953685, and POLICE OFFICERS JOHN
DOES #1-10 (names and number of whom are unknown at
present), and other unidentified members of the New York
City Police Department,

JURY TRIAL DEMANDED

Defendants.
----- X

Plaintiff, JORGE PENA, by his attorneys, Jacobs & Hazan, LLP, as and for his
Complaint herein, alleges upon information and belief as follows:

PRELIMINARY STATEMENT

1. This is a civil rights action to recover money damages arising out of defendants' violation of plaintiff's rights as secured by the Civil Rights Act, 42 U.S.C. Section 1983, and of rights secured by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, and the common law and the laws of the State of New York. On November 8, 2014, at approximately 4:00 a.m., plaintiff, Jorge Pena, was subjected to a false arrest, false imprisonment by the defendant New York City police officers. Thereafter, plaintiff was maliciously prosecuted and denied the right to a fair trial by the defendant police officers. Plaintiff was deprived of his constitutional and common law rights when the individual defendants falsely arrested, imprisoned, maliciously prosecuted, and denied the right to a fair trial in violation of the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

PARTIES

2. Plaintiff JORGE PENA is a resident of the State of New York.

3. POLICE OFFICER BINAGI, Tax # 953685, is and was at all times relevant herein, an officer, employee, and agent of the New York City Police Department.

4. POLICE OFFICER BINAGI, Tax # 953685, is and was at all times relevant herein, assigned to the Transit District #2 precinct.

5. POLICE OFFICER BINAGI, Tax # 953685, is being sued in his individual and official capacities.

6. New York City Police Officers JOHN DOES #1-10 are and were at all times relevant herein officers, employees, and agents of the New York City Police Department.

7. Police Officers JOHN DOES #1-10 are being sued in their individual and official capacities.

8. At all times relevant herein, the individual defendants were acting under color of state law in the course and scope of their duties and functions as agents, servants, employees and officers of the New York City Police Department, and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties. They were acting for and on behalf of the New York City Police Department at all times relevant herein, with the power and authority vested in them as officers, agents and employees of the New York City Police Department and incidental to the lawful pursuit of their duties as officers, employees and agents of the New York City Police Department.

9. At all times relevant hereto, defendant CITY OF NEW YORK, operated, maintained managed, supervised and controlled the New York City Police Department ("NYPD") as part of and in conjunction with its municipal function.

10. Defendant City of New York is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain a police department which acts as its agent in the area of law enforcement and for which it is ultimately responsible. The defendant City of New York assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risks attach to the public consumers of the services provided by the New York City Police Department.

11. Plaintiff in furtherance of his State causes of action filed a timely Notice of Claim against the CITY OF NEW YORK, in compliance with the Municipal Law Section 50.

12. More than thirty (30) days have elapsed since service of said Notice of Claim was filed and THE CITY OF NEW YORK has failed to pay or adjust the claim.

13. THE CITY OF NEW YORK held a 50-h hearing on September 3, 2015,

14. This action falls within one or more of the exceptions as set forth in CPLR Section 1602, involving intentional actions, as well as the defendant, and/or defendants, having acted in reckless disregard for the safety of others, as well as having performed intentional acts.

15. Plaintiff sustained damages in an amount in excess of the jurisdictional limits of all the lower Courts of the State of New York.

STATEMENT OF FACTS

16. On November 8, 2014, at approximately 3:00 a.m., plaintiff was lawfully riding the F train in the vicinity of the 4th Street Subway station, NY, NY.

17. Plaintiff lawfully was lawfully traveling home from work on the subway.

18. While plaintiff was on the subway, without provocation, a female that plaintiff did not know started verbally harassing plaintiff in an aggressive manner.

19. Plaintiff ignored the woman that was verbally harassing him and tried to walk away from her.

20. However, the woman continued to verbally abuse plaintiff and then without provocation, the woman began to physically attack plaintiff.

21. The woman struck plaintiff in the face and ear with a high heel shoe, causing plaintiff's face and ear to bleed and causing plaintiff to sustain serious physical injuries, including but not limited to, a laceration to plaintiff's ear.

22. As plaintiff was being viciously attacked by the woman, he was in fear for his life and safety, and attempted to defend himself from being attacked.

23. Notably, there were numerous witnesses to the vicious attack and at least one witness filmed the entire attack by the female. The video clearly showed that the female attacked plaintiff without provocation, and that that plaintiff attempted to defend himself from the attack.

24. When the train pulled into the West 4th Street subway station, the defendant police officers responded to the subway car where the female attacked plaintiff.

25. The defendant police officers spoke to the witnesses of the attack all of whom told the police officers that the woman was the aggressor, and that plaintiff was the victim of the attack.

26. Further, the defendant police officers viewed the cell phone video footage of the attack captured by at least one witness, which clearly showed that the female was the aggressor, and that the female attacked plaintiff with a high heel shoe, without provocation.

27. Additionally, the defendant police officers observed the visible physical injuries plaintiff sustained to his ear and head. Moreover, the officer saw plaintiff bleeding profusely. On the other hand, the female assailant did not have physical injuries.

28. All information in the officers' possession at the time of plaintiff's arrest established that plaintiff was a crime victim and had not committed a crime.

29. The evidence in the possession of the defendant police officers at the time they arrested plaintiff could not have caused a reasonable police officer to believe plaintiff committed a crime.

30. At no time did plaintiff commit any crime, nor did defendants have reason to believe he committed a crime.

31. Nevertheless, the defendant police officers handcuffed plaintiff and arrested plaintiff without legal justification or probable cause.

32. After plaintiff was arrested, he was transported to New York-Presbyterian Lower Manhattan Hospital to receive medical treatment for the physical injuries sustained during the attack.

33. The medical treatment included treatment for the laceration to his ear and head.

34. On November 8, 2014, at approximately 6:00 a.m., plaintiff was discharged from the hospital and transported to the precinct.

35. While at the precinct, plaintiff was fingerprinted, photographed, and placed in a holding cell.

36. The defendant police officers falsely communicated to the Manhattan District Attorney's Office that plaintiff had committed a crime despite clear video evidence indicating the contrary.

37. Moreover, upon information and belief, the defendant police officers intentionally and maliciously withheld exculpatory evidence from the Manhattan District Attorney's Office, namely the video footage exonerating plaintiff.

38. Based upon the false, incomplete, and/or misleading information provided to the District Attorney's Office by the defendant police officers, a prosecution against plaintiff was initiated.

39. After several hours at the precinct, plaintiff was transported to Manhattan Central Booking.

40. While at central booking, plaintiff was forced to endure filthy conditions.

41. Plaintiff was unlawfully charged with Assault in the 3rd Degree and Disorderly Conduct.

42. On November 9, 2014, after an unlawful detention that lasted approximately 36 hours, plaintiff was arraigned in Manhattan Criminal Court and bail was set by the Judge in the amount of \$1,000.

43. Plaintiff was unable to post bail and therefore was remanded to the custody of the Department of Correction.

44. On November 9, 2014, at approximately 4:30 p.m., plaintiff was transported to the Manhattan Detention Center ("MDC").

45. On or about November 11, 2014, all charges against plaintiff were dismissed and he was released from MDS on November 11, 2014 at approximately 5:00 a.m.

46. Notably, the female that assaulted plaintiff, Danay Howard, was arrested and prosecuted for assaulting plaintiff.

47. Danay Howard was charged and Indicted on Felony Assault charges PL Section 120.05(1), under Indictment # 01603-2015.

48. Danay Howard pled guilty to Felony Assault and is presently awaiting her sentencing date on March 16, 2016.

49. Some of the defendant police officer defendants observed the violation of plaintiff's rights under the Constitution of the United States and New York State Law and did nothing to prevent the false imprisonment, false arrest, malicious prosecution, and denial of a fair trial against plaintiff.

50. The false arrest, false imprisonment, malicious prosecution, and denial of a fair trial against plaintiff by the individually named defendant police officers caused him to sustain severe physical, psychological and emotional trauma.

51. As a result of the false arrest, false imprisonment, malicious prosecution, and denial of a fair trial plaintiff lost his job.

52. As a result of losing his job, plaintiff was forced to borrow money from several friends to pay his bills.

53. As a result of the false arrest, false imprisonment, malicious prosecution, and denial of a fair trial plaintiff's relationship with his family, especially his mother was negatively affected.

FIRST CAUSE OF ACTION

Violation of Plaintiff's Fourth and Fourteenth Amendment Rights

54. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 53 with the same force and effect as if more fully set forth at length herein.

55. The individually named police officer defendants while acting in concert and within the scope of their authority, caused plaintiff to be falsely arrested, falsely imprisoned, maliciously prosecuted, and denied the right to a fair trial without probable cause in violation of plaintiff's right to be free of an unreasonable seizure and denial of due process under the Fourth Amendment of the Constitution of the United States and to be free of a deprivation of liberty under the Fourteenth Amendment to the Constitution of the United States.

SECOND CAUSE OF ACTION

False Arrest and False Imprisonment

56. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 55 with the same force and effect as if more fully set forth at length herein.

57. The acts and conduct of the defendants constitute false arrest and false imprisonment under the laws of the State of New York. Defendants intended to confine plaintiff and, in fact, confined plaintiff, and plaintiff was conscious of the confinement. In addition, plaintiff did not consent to the confinement and the confinement was not otherwise privileged.

58. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct,

59. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

THIRD CAUSE OF ACTION

Negligent Hiring, Retention, Training and Supervision

60. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 59 with the same force and effect as if more fully set forth at length herein.

61. The City of New York and its employees, servants and/or agents acting within the scope of their employment did negligently hire, retain, train and supervise defendants,

individuals who were unfit for the performance of police duties on the aforementioned dates at the aforementioned locations.

FOURTH CAUSE OF ACTION

Negligence

62. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 61 with the same force and effect as if more fully set forth at length herein.

63. Defendants owed a duty of care to plaintiff.

64. Defendants breached that duty of care by falsely arresting, falsely imprisoning, maliciously prosecuted, and denying plaintiff the right to a fair trial.

65. As a direct and proximate cause of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

66. All of the foregoing occurred without any fault or provocation by plaintiff.

67. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

FIFTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress

68. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 67 with the same force and effect as if more fully set forth at length herein.

69. By the actions described herein, defendants, each acting individually and in concert with each other, engaged in extreme and outrageous conduct, conduct utterly intolerable in a civilized community, which negligently caused severe emotional distress to plaintiff, Jorge Pena. The acts and conduct of the defendants were the direct and proximate cause of injury and damage to plaintiff and violated plaintiff's statutory and common law rights as guaranteed plaintiff by the laws and Constitution of the State of New York.

70. As a result of the foregoing, plaintiff was deprived of liberty and sustained great emotional injuries.

71. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

SIXTH CAUSE OF ACTION

Failure to Intervene

72. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 71 with the same force and effect as if more fully set forth at length herein.

73. Defendants had an affirmative duty to intervene on behalf of plaintiff, whose constitutional rights were being violated in their presence by other officers.

74. Defendants failed to intervene to prevent the unlawful conduct described herein.

75. As a result of the foregoing, plaintiff's liberty was restricted for an extended period of time, he was put in fear of his safety, and he was humiliated and subject to other physical constraints.

76. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

77. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

SEVENTH CAUSE OF ACTION

Malicious Prosecution

78. Plaintiff repeats and realleges paragraphs 1 through 77 as if fully set forth herein.

79. The acts and conduct of the defendants constitute malicious prosecution under the United States Constitution, the laws of the State of New York and New York State common law.

80. Defendants commenced and continued a criminal proceeding against plaintiff.

81. There was actual malice and an absence of probable cause for the criminal proceeding against plaintiff and for each of the charges for which he was prosecuted.

82. The prosecution and criminal proceedings terminated in plaintiff's favor on the aforementioned dates.

83. Plaintiff was subjected to a post-arraignment deprivation of liberty sufficient to implicate plaintiff's Fourth Amendment rights.

84. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

85. The City, as the employer of the police officer defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

EIGHTH CAUSE OF ACTION

Violation of Plaintiff's 5th Amendment Right Denial of Due

Process and Denial of Right to Fair Trial

86. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered 1 through 85 with the same force and effect as if fully set forth herein.

87. Defendants, individually and collectively, manufactured and/or withheld false evidence and forwarded this false evidence to prosecutors in the New York County District Attorney's Office.

88. Defendants filled out false and misleading police reports and forwarded them to prosecutors in the New York County District Attorney's Office.

89. Defendants signed false and misleading criminal court affidavits and forwarded them to prosecutors in the New York County District Attorney's Office.

90. In withholding/creating false evidence against plaintiff Jorge Pena, and in providing/withholding information with respect thereto, defendants violated plaintiff's constitutional right to a fair trial under the New York State Constitution and under the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution.

91. As a result of the foregoing, plaintiff Jorge Pena, sustained, inter alia, loss of liberty, emotional distress, embarrassment and humiliation, lost earnings and deprivation of his constitutional rights.

92. Defendants were at all times agents, servants, and employees acting within the scope of their employment by the City of New York and the New York City Police Department, which are therefore responsible for their conduct.

93. The City, as the employer of the officer defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

JURY DEMAND

94. Plaintiff hereby demands trial by jury of all issues properly triable thereby.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Jorge Pena demands judgment against the defendants on each cause of action in amounts to be determined upon the trial of this action which exceeds the jurisdiction of lower courts, inclusive of punitive damages and attorneys fees inclusive of costs and disbursements of this action, interest and such other relief as is appropriate under the law. That the plaintiff recover the cost of the suit herein, including reasonable attorney's fees pursuant to 42 U.S.C. § 1988.

Dated: New York, New York
 February 5, 2016

By: /s/ _____
 STUART E. JACOBS
 DAVID M. HAZAN
 JACOBS & HAZAN, LLP
 Attorneys for Plaintiff
 11 Park Place, 10th Floor
 New York, NY 10007
 (212) 577-2690

TO: City of New York, New York City Law Department, 100 Church Street, NY, NY 10007
 POLICE OFFICER BINAGI, Tax # 953685, Transit District 2, West Broadway and
 Lispenard Street, NY, NY

ATTORNEY'S VERIFICATION

STUART E. JACOBS, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am a partner of the law firm of **JACOBS & HAZAN, LLP**, I have read the annexed **VERIFIED COMPLAINT** and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

DATED: New York, New York
February 5, 2016

/s/
STUART E. JACOBS